DEPARTMENT OF STATE REVENUE

04-20050515.LOF

Letter of Findings Number: 05-0515
Sales/Use Tax
For the Years 2002-2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax–Public Transportation

Authority: IC § 6-2.5-5-27; *Carnahan Grain, Inc. v. Indiana Dep't of State Revenue*, 828 N.E.2d 465 (Ind. Tax Ct. 2005).

Taxpayer protests the assessment of sales and use tax with respect to items that it claimed were used in public transportation, as well as lease payments on an airplane.

STATEMENT OF FACTS

Taxpayer is a company engaged in various lines of business, including the transportation of heavy machinery. As part of its transportation and related business, Taxpayer performs several operations in addition to the mere hauling of machinery from one location to another.

Taxpayer loads and unloads the machinery onto its vehicles. In some instances, Taxpayer also disassembles machinery at the starting location and reassembles the machinery at the destination, primarily to ensure that the machinery is functioning after the journey. In addition, Taxpayer also provides short-term warehousing of equipment in certain cases.

Taxpayer claimed several items of tangible personal property as exempt, on the grounds that the items were predominantly used in providing public transportation. The Department conducted an audit of Taxpayer. Taxpayer and the Department agreed to use a three-month benchmark period to determine whether Taxpayer was predominantly engaged in public transportation. As a result of the audit, the Department determined that roughly 23 percent of Taxpayer's receipts were derived from public transportation. Consequentially, the Department determined that various items of tangible personal property were not used in providing public transportation and assessed use tax with respect to those items. The Department did allow an exemption for other items, such as vehicles used to transport customer's equipment.

Taxpayer protested the assessment (as well as a denial of refund claim for a period preceding the period covered in this letter of findings, and to which the Department's findings in this letter of findings also applies), a hearing was held, and this letter of findings results. Additional facts will be supplied as necessary.

I. Sales and Use Tax–Public Transportation

DISCUSSION

During the period in question, the Department reviewed Taxpayer's receipts, and divided the receipts into eight categories. Of those categories, the Department determined that trucking receipts, along with 50 percent of "load, transport, unload, set and level" receipts and 50 percent of warehouse storage, constituted receipts derived from public transportation. No other receipts were determined to be the result of public transportation. The audit concluded that roughly 23 percent of Taxpayer's overall receipts were attributable to public transportation.

Taxpayer's approach to computing receipts from public transportation resulted in a significantly higher percentage than the 23 percent determined by the Department's auditor. Taxpayer listed certain non-transportation receipts in different categories not related to public transportation as the Department did. In addition, Taxpayer has taken various positions at odds with the Department related to public transportation receipts. First, Taxpayer attributed "load, transport, unload, set and level" receipts entirely to transportation rather than the fifty percent that the Department had attributed those receipts.

Second, Taxpayer attributed all receipts on a given invoice to public transportation if transportation constituted any part of the receipt. The receipts that Taxpayer attributed to public transportation included rigging and disassembly fees as well as trucking fees. For instance, if Taxpayer's receipts showed $4,000 to provide men and equipment for removal and loading of a machine, $6,000 to reinstall the machine, and $3,000 for transportation and fuel charges, the Department listed $10,000 in a category such as rigging (not considered public transportation), and $3,000 as trucking (public transportation). Thus, the $3,000 of trucking fees would be attributable to public transportation under the Department's approach in determining the portion of Taxpayer's receipts that were attributable to public transportation. However, Taxpayer listed the entire $13,000 as attributable the public transportation. Furthermore, in instances where Taxpayer received money only for reinstalling and removal, Taxpayer classified those receipts as not related to public transportation.

Taxpayer also generally treated warehouse storage receipts as not attributable to public transportation. Exceptions exist to the general rules that Taxpayer applied, though the effect of the exceptions is minimal. Under Taxpayer's approach, over 62 percent of Taxpayer's receipts were the result of public transportation. Accordingly,

Taxpayer argues that the items assessed by the Department were predominantly used in providing public transportation.

IC § 6-2.5-5-27 provides that:

> Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

In addition, the Indiana Tax Court has held that if a particular item of property is predominantly used in providing public transportation, then the item is exempt. *Carnahan Grain, Inc. v. Indiana Dep't of State Revenue*, 828 N.E.2d 465 (Ind. Tax Ct. 2005). Conversely, if the item is not predominantly used in providing public transportation, then the item is not exempt under Ind. Code § 6-2.5-5-27. *Carnahan Grain*, 828 N.E.2d at 468-69 (citations omitted).

Taxpayer analogizes its situation to a moving company which not only hauls but also performs disassembly and reassembly of furniture. However, Taxpayer provides no statutes, regulations, case law, department rulings, or other basis to support this proposition. The exemption under Ind. Code § 6-2.5-5-27 is for public transportation–that is, the transportation of persons or other persons property from one location to another. Taxpayer used certain items for transportation, such as vehicles that actually transported the machinery and equipment that Taxpayer hauled. However, the items assessed by the Department–items that served mixed purposes such as partially for trucking and partially for rigging–were not predominantly used for public transportation, because Taxpayer's receipts (upon which Taxpayer and the Department both relied as a determining test) indicated that less than 50 percent of Taxpayer's receipts were derived from public transportation.

Taxpayer separately protested the imposition of use tax with respect to lease payments paid on an airplane on which a related company had been previously denied an exemption for leasing. The Department denied the related company's exemption for tangible personal property purchased for leasing based on the conclusion that the leasing arrangement between Taxpayer and the related company was non-existent–in effect, Taxpayer was paying itself for the use of Taxpayer's own airplane. Because the Department determined that Taxpayer was not in the leasing business, the "lease" payments it made are not subject to use tax.

FINDING

Taxpayer's protest is sustained with respect to use tax on claimed lease payments on the airplane. Taxpayer's protest is otherwise denied.

Posted: 11/29/2006 by Legislative Services Agency
An html version of this document.